

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7344**

**BILL NUMBER:** HB 1238

**NOTE PREPARED:** May 4, 2011

**BILL AMENDED:** Apr 29, 2011

**SUBJECT:** Advocacy with public funds.

**FIRST AUTHOR:** Rep. Noe

**FIRST SPONSOR:** Sen. Charbonneau

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:**     **GENERAL**  
                              **DEDICATED**  
                              **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** *Restrictions-School Corporations:* This bill provides that during the period beginning with the adoption of a resolution by a school corporation to place a school levy referendum question on the ballot and continuing through the day on which the referendum is submitted to the voters, the school corporation may not promote a position on the referendum by taking certain actions.

*Division of Capital Projects:* The bill provides that a political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process. (Under current law, such a prohibition applies under the capital projects referendum statutes.)

*Ballot Language Approval:* The bill provides that the ballot language for a capital project referendum must first be approved by the Department of Local Government Finance (DLGF). (Under current law, the DLGF makes recommendations concerning the ballot language.) It also provides that the language of a school referendum levy question to be submitted to voters must first be approved by the DLGF.

*Referendum Tax Levy:* The bill provides that if a referendum levy is approved by the voters in a school corporation in a calendar year, another referendum levy question may not be placed on the ballot in the school corporation in the following calendar year. It provides that if a school corporation imposes a referendum levy approved in a referendum, the school corporation may not simultaneously impose more than one additional referendum levy approved in a subsequent referendum.

*Advocacy:* The bill provides that advocacy or discussion by certain officials concerning a petition and remonstrance or referendum is allowed and is not considered a use of public funds. It prohibits an employee of a school corporation from initiating discussion of a petition and remonstrance or referendum at a meeting between a teacher and parents of a student regarding the student's performance or behavior at school. It

provides that an official of a political subdivision who is authorized to discuss or advocate for or against a petition or remonstrance or a referendum may be assisted by an employee of the political subdivision.

The bill prohibits a person or organization that provides goods or services to a school corporation under contract from spending money to promote a position on a school corporation's capital project petition and remonstrance, capital project referendum, or referendum tax levy, unless: (1) the person is an employee of the school corporation whose employment is governed by a collective bargaining contract or employment contract; or (2) the person or organization has a contract with a school corporation solely for the use of the school corporation's facilities.

*Certification:* The bill removes the county fiscal body from the school referendum levy process. It provides that the county fiscal body is not required to certify the referendum question. The bill also repeals a superseded provision.

**Effective Date:** Upon passage; July 1, 2011.

**Explanation of State Expenditures:** *Ballot Language Approval:* The approval of the referendum question for capital projects or school referendum tax levies should not increase DLGF's costs. The Department already reviews the public question language and would not require additional expenditures or administrative time to accomplish this provision.

*Certification:* If the voters approve the referendum levy, the DLGF, rather than the county fiscal body, would notify the school corporation that the corporation would be authorized to collect the additional levy. The Department would be able to comply with this provision within its existing level of resources.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** Summary:

a. *Restrictions-School Corporations:* Forbidding a school corporation from promoting a position on a referendum tax levy could reduce school expenditures.

b. *Division of Capital Projects:* The impact would depend upon whether voters would reject a project via the petition and remonstrance process if it had not been divided into smaller projects in order to avoid being voted on.

c. *Advocacy:* There would be no fiscal impact as long as school board members, superintendents, assistant superintendents, or chief school business officials do not use public funds to promote a position on the project or referendum tax levy.

d. *Certification:* There would be no fiscal impact if the governing body of a school corporation rather than the county fiscal body certifies the question to be voted on.

*Restrictions-School Corporations:* The bill prohibits a school corporation from promoting a position on a referendum tax levy. The disallowed actions include:

1. Using school facilities or equipment to be used to promote the referendum unless equal access is given to persons opposing the referendum.
2. Making expenditures from funds controlled by the corporation to promote the referendum.
3. Using employees to promote the referendum during normal working hours or paid overtime, or otherwise compelling employees to promote the referendum.
4. Promote the referendum by:

- a. Using students to transport written materials in promotion of a position; or
- b. Including a statement within other communications sent to a student's residence.

*Division of Capital Projects:* Current law prohibits a political subdivision from artificially dividing a capital project into multiple capital projects in order to avoid having to submit the project to a referendum. This bill extends the restriction to those projects normally eligible to be approved via a petition and remonstrance process.

*Advocacy:* Current law prohibits local taxing units from using its facilities, public funds or employees to promote a position (positive or negative) on a controlled project; employees, though, are permitted to work on the project as part of their regular duties. If the project is in a school district, the corporation may not use students in any way to influence support for the project. Additionally, consultants, who may be involved in the design of the project and in overseeing the lease agreement, may not spend any money to influence voting for or against the project. This restriction also extends to a person or an organization that has a contract or arrangement (whether formal or informal) with a school corporation for the use of any of the school corporation's facilities. Violation of this provision is a Class A infraction.

This bill permits employees of the taxing unit to disseminate factual information on the project in response to inquiries from the public. Within a school corporation it permits school employees to direct parents to the appropriate office to obtain pertinent information about the project if the subject was initiated by the parent during an official meeting between the parent and the school employee (as for example during a parent - teacher meeting to discuss the student's performance). However, employees would not be permitted to initiate a discussion about the project.

The bill also permits school employees under contract to make personal expenditures to advocate a position on the project. This permission also extends to a person or an organization that has a contract or arrangement with the school corporation to use its facilities. However, if the person or organization is under contract to provide goods or services to the corporation, the restriction on spending money would be in force.

The bill permits a school board member, superintendent, assistant superintendent, or chief school business official to promote a position or discusses the referendum or the petition with individuals or groups as long as it is not done by using public funds. It also permits other employees to assist these officials in presenting the information. However, this permission does not extend to discussing the petition or referendum with students during the regular school day.

Under the bill, the same conditions that apply to a controlled project (including the provisions in this bill) would also apply to a school corporation during the referendum process for a tax levy (see also *Restrictions-School Corporations* above).

*Certification:* Under this bill, the current statute authorizing the county fiscal body to certify the question to be voted on at the referendum would be repealed. Instead, the governing body of the school corporation would assume this duty.

**Explanation of Local Revenues:** *Referendum Tax Levy:* Not permitting a school corporation to place an operating levy referendum on the ballot in the current year if one was approved the previous year, and not allowing more than one additional referendum levy could reduce school revenue. The amount of the reduction is unknown.

**Background:** Since 1976, about 78 operating referendums have been placed on ballots. About 34 (44%) have passed, and 44 (56%) have failed. During CY 2010, 13 operating referendums were on the ballot with 4 (30%) passing, and 9 (70%) failing. Currently, about 11 schools have operating referendums as separate levies and the other 23 schools had their General Fund levies increased. School Referendum Fund levies are estimated to be about \$30 M in CY 2011.

**State Agencies Affected:** DLGF.

**Local Agencies Affected:** All.

**Information Sources:**

**Fiscal Analyst:** David Lusan, 317-232-9592; Chuck Mayfield, 317-232-4825.